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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No. 179

PURE-VAC DAIRY PRODUCTS CORPORATION,
*Appellant,*

vs.

STATE OF MISSISSIPPI Ex Rel. JOE T. PATTERSON,
ATTORNEY GENERAL,
*Appellee.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

## MOTION TO DISMISS

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VS.

STATE OF MISSISSIPPI Ex Rel. JOE T. PATTERSON,
ATTORNEY GENERAL,
*Appellee.*

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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## MOTION TO DISMISS

Appellee in the above styled case moves to dismiss this appeal on the grounds that the decision below is clearly correct and that no substantial federal question is presented.

## STATEMENT OF THE CASE

This suit was instituted in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by the duly elected and acting Attorney General of the State of Mississippi, for and on behalf of the duly elected and acting Commissioner of Agriculture and Commerce of the State

of Mississippi pursuant to Section 4560-118(c), Mississippi Code Annotated Recompiled (1942), as amended, in order to enjoin the Appellant from certain violations of The Milk Products Sales Act of the State of Mississippi, being Sections 4560-101 through 4560-124, inclusive, Mississippi Code Annotated Recompiled (1942), as amended, a copy of said Act being set forth in Appendix B of Appellant's Jurisdictional Statement.

The Milk Products Sales Act is basically a law designed to prohibit the sale of perishable fresh milk products at less than cost. Perishable fresh milk products consist of ice cream, ice milk and other frozen dairy products, as distinguished from fluid milk products regulated under the Milk Commission Act of Mississippi. The statute also prescribes certain unfair trade practices as being unlawful, which supplements the basic provisions of the Act by prohibiting certain activities which would tend to circumvent the basic provision prohibiting sales below cost. The law prescribes a system for filing price schedules with the Commissioner and makes it unlawful for a licensee to sell milk products at a price below the price schedule so filed. If a licensee files a revised price schedule containing prices which are below those prevailing in the market, the statute prescribes a certain procedure whereby said licensee must submit proof that the revised prices are not below cost, which proof shall be subject to verification by the Commissioner. It was the refusal of Appellant to comply with this latter part in regard to the furnishing of proof and permitting same to be verified by the Commissioner that necessitated the filing of this suit in the Court below. The statute also requires the filing of certain reports and the payments of certain assessments upon milk products sold within the State of Mississippi, and it is the refusal of Appellant to file such reports and pay such assessments

that also necessitated the filing of this suit in the Court below.

The Appellant is a corporation duly organized and existing under the laws of the State of Tennessee, but has been authorized and qualified to do business in the State of Mississippi, said Appellant having appointed a resident agent for service of process. The Appellant is engaged in the business of selling milk products to retailers located within the State of Mississippi, said Appellant having been issued a license by the Commissioner to operate in the State of Mississippi as a "Manufacturer" and "Distributor" of milk products. Pursuant to the provisions of Section 4560-108(a), Mississippi Code Annotated Recompiled (1942), as amended, the Appellant did file with the Commissioner a price schedule for milk products offered for sale at wholesale to retailers, said price schedule becoming effective on June 9, 1960. Said price schedule stated that ice cream, 10 per cent butterfat, would be sold for $1.05 per gallon and that ice milk would be sold for $.89 per gallon.

On various dates from February 6, 1961, through December 18, 1961, the Appellant did violate the provisions of Section 4560-108(c), Mississippi Code Annotated Recompiled (1942), as amended, by selling milk products to retailers in the State of Mississippi at prices lower than those set forth in said price schedule, and the Appellant did on June 6, 1962, agree to pay the cost of investigation and executed a written cease and desist agreement whereby the Appellant agreed to thereafter cease and desist from any violation or threatened violation of The Milk Products Sales Act.

Sometime during the months of November or December, 1962, the Commissioner was advised by officials of the Appellant that they would no longer sell any milk

products within the State of Mississippi and that thereafter the Appellant would make all sales at f.o.b. Appellant's dock in Memphis, Tennessee, at prices of $.80 per gallon for ice cream and $.60 per gallon for ice milk, which prices were later increased to $.85 and $.65 respectively because of an increase in sugar prices, with the cost of transportation from the dock in Memphis to the location of the retailer being paid for by said retailer. However, subsequent investigation disclosed that all of said transactions were simply a scheme or device to evade the laws of the State of Mississippi, and that the sales were being made at delivered wholesale prices in the State of Mississippi.

Since the revised price schedule contained prices which were below those prevailing in the area to be served, the Commissioner, acting pursuant to the authority contained in Section 4560-108(b), Mississippi Code Annotated Recompiled (1942), as amended, notified the Appellant that it would be necessary for Appellant to furnish proof that said prices were not below cost, which would be subject to verification by the Commissioner. The Appellant has failed and refused to comply with said statutory requirement.

Because of the foregoing reasons, the Appellee did on September 11, 1963, file its Bill of Complaint in the Chancery Court of the First Judicial District of Hinds County, Mississippi, and requested that said Court enter its decree enjoining the Appellant from any further violations of The Milk Products Sales Act. On the 6th day of February, 1964, the Chancery Court entered its Final Decree dismissing the Bill of Complaint with prejudice.

The case was then appealed to the Supreme Court of the State of Mississippi, where the only issues in controversy were as follows:

(1) Whether or not the Appellant has been selling milk products within the State of Mississippi in order that the jurisdiction of the State may be applied thereto.

(2) Whether or not the enforcement of The Milk Products Sales Act as to these transactions would constitute an undue burden on interstate commerce.

On December 18, 1964, the Supreme Court rendered its opinion holding in favor of the Appellee on both issues, said opinion being set forth in Appendix A of Appellant's Jurisdictional Statement, and reported in 170 So.2d 274. A Suggestion of Error was overruled on January 25, 1965, and Judgment rendered on the same date. As to the question of interstate commerce, the Mississippi Supreme Court held as follows:

> In either event, however, the regulation concerns interests which are peculiarly local, and does not infringe the national interest in maintaining freedom of commerce across state lines. It is not an unreasonable interference with national interests, but the protection of a legitimate local interest, the prevention of unfair competition, and the maintenance of minimum prices for sales made in this state, in this industry vitally affecting the health and public welfare of the state.

The Milk Products Sales Act does not guarantee or insure any manufacturer of any certain return on his investment, but said Act is basically a prohibition against sales below cost. If a manufacturer is more efficient and economical in his operation than his competitors, resulting in a lower cost, then said manufacturer can sell at prices lower than his competitors, and the savings brought about by economy and efficiency can then be passed on to the consuming public. The Act is designed to promote rather than curtail legitimate competition. A manufacturer who

sells at less than his own cost would do so, not for profit, but for the sole purpose of destroying his competitors with limited capital who are unable to operate for very long at a loss. After the competition is destroyed, the manufacturer with the most capital will then control the market and have the consumer at his mercy. As it has been said before, "A price war does not determine who is right, but who is left."

## ARGUMENT

### 1. The Mississippi Supreme Court Was Correct in Holding That the Sales Were Made in the State of Mississippi, Thereby Placing Them under the Jurisdiction of The Milk Products Sales Act of the State of Mississippi.

A distinction should be made between sales made at "delivered wholesale prices" and those made at "dock prices". Sales made at delivered wholesale prices are those in which the manufacturer uses his own trucks driven by his own employees in delivering milk products to a *retailer*. Sales made at dock prices are those which are made to persons other than retailers, such as *distributors* or other *manufacturers*, who actually receive the product at the manufacturer's dock in their own truck, or in some cases shipped by contract carrier, and said distributor or other manufacturer then resells the product to retailers at delivered wholesale prices.

In this case, the Appellant has incorporated some of the features of a dock price system, at least the form thereof, in order to devise a scheme to evade the Laws of Mississippi and other states which, unlike Tennessee, have effective fair trade laws prohibiting sales below cost. It should be noted that this is not a case where a distributor

uses his own truck and driver to pick up the milk product at the Appellant's dock in Memphis, Tennessee, nor is it a case where a common or contract carrier is used for this purpose, said common and contract carriers being the only legitimate occasion to use the letters "f.o.b." in the first place. The Appellant has, as to form, adopted a paper transaction for a system normally used in delivering products from a manufacturer to a distributor, whereas in substance and in reality the delivery system is the same as customarily used in transactions between a manufacturer and a retailer. The milk product is delivered in trucks owned or leased by the Appellant and driven by the Appellant's employees, and the product is under the complete control of the Appellant from Memphis to the premises of the stores in the State of Mississippi, which is no different from any other sale made at a delivered wholesale price. There is no actual, open, manifest, visible, or continuous change of possession until the product is received at the premises of the stores in Mississippi, since prior tc that time the product is continuously in the possession and under the control of the Appellant, being transported in trucks and vehicles owned or leased by the Appellant and driven by employees of the Appellant.

The Appellant is attempting to operate in a dual capacity, both as Pure-Vac, the manufacturer, and Pure-Vac, the hauler, and is now contending that title passes in Memphis, Tennessee, when Pure-Vac, the manufacturer, delivers to Pure-Vac, the hauler. The Mississippi Supreme Court was correct in stating as follows:

> This fiction of duality is an insufficient basis on which to declare that possession was delivered in Tennessee. 170 So.2d, at page 278.

The foregoing facts alone are sufficient to justify the decision of the Mississippi Supreme Court; however, there

are certain additional undisputed facts in this case which clearly show beyond doubt that this is simply a scheme or device to evade the Laws of Mississippi, which facts are as follows:

(1) The retailers in Mississippi were first contacted by travelling representatives of the Appellant who were seeking to induce said retailers to purchase milk products from the Appellant, the solicitations by said representatives of Appellant occurring within the territorial limits of the State of Mississippi.

(2) It was the understanding of the retailers in Mississippi that the Appellant was to bear the loss on all products damaged while in route from Memphis to the store in Mississippi, and that they would not accept any products so damaged while in transit.

(3) Although the evidence shows that the retailers would transmit their order by mail or telephone to Appellant's office in Memphis, Tennessee, it should be noted that the telephone calls were paid by the Appellant and that on some occasions the telephone calls were originated by the Appellant in calling to see if the retailer desired to place an order when a truck was coming in his vicinity.

(4) The retailer was to pay a specified transportation charge of $.02, $.03, or $.04 per gallon according to the price schedule filed with the Commissioner, but the record shows without dispute that no transportation charge was made or paid by the retailer for the various novelty items purchased from the Appellant.

(5) The record also shows by the depositions taken in this case that it is the understanding of the retailers that title does not pass until the milk product is either received at the store or paid for by the retailer, both of which occur in the State of Mississippi.

Appellant admitted that it was within the power of Pure-Vac to shift the f.o.b. point anywhere along the route. To permit any parties to a transaction, under the guise of the private law of sales, to convert an otherwise local transaction to one in interstate commerce would completely destroy and disrupt the entire regulatory system throughout the United States and would completely break down well-established relationships existing among the several states as to their respective responsibilities. What possible interest could the State of Tennessee have in the various transactions involved in this litigation since said transactions do not in any way affect the competitive conditions existing in that state, but on the other hand, these same transactions are of vital and utmost concern to the State of Mississippi. To pass title, there must be a delivery whereby Pure-Vac surrenders possession to either the buyer or a third party (contract or common carrier) on behalf of the buyer. Regardless of the fact that the particular order is set aside and identified at the Memphis plant, Pure-Vac does not divest itself of possession and control until it arrives in Mississippi.

Therefore, the Mississippi Supreme Court was correct in holding that the sales of milk products by the Appellant in this case are made within the State of Mississippi under the law of sales.

Even if Appellant had satisfied the technicalities of the private law of sales, he could not prevail in this case, because it is not within the power of the parties by the form of their contract to convert what was exclusively a local transaction, subject to state control, into an interstate commerce transaction protected by the commerce clause. *Superior Oil Company* v. *Mississippi*, 280 U.S. 390, 50 S. Ct. 169, 74 L. Ed. 504, *Browning* v. *Waycross*, 223 U.S. 16, 34 S. Ct. 578, 58 L. Ed. 828.

**2. The Application of The Milk Products Sales Act of Mississippi to the Transactions of the Appellant in This Case Does Not Constitute an Undue Burden on Interstate Commerce.**

First, Appellee will discuss four decisions of the U. S. Supreme Court which are frequently cited by opponents of state milk regulatory laws, which cases are also being relied upon by opposing counsel in their Jurisdictional Statement.

In the case of *Baldwin* v. *Seelig,* 294 U.S. 511, 55 S. Ct. 497, 79 L. Ed. 1032 (1935), a dealer in Vermont purchased bulk milk from producers in Vermont. The dealer in turn sold the milk in bulk to a handler in New York, it being admitted that title passed at the dealer's plant in Vermont. The handler then bottled the milk in New York and sold to stores in New York. New York was attempting to regulate a transaction wholly occurring within the State of Vermont, and the action of the state was obviously discriminatory and directed toward the exclusion of outside milk. Therefore, the Baldwin case has no application to the case at bar.

In the case of *Hood* v. *DuMond,* 336 U.S. 525, 69 S. Ct. 657, 93 L. Ed. 865 (1949), a handler located in Massachusetts made application with the Commissioner in New York to build a receiving station in New York, at which milk would be purchased from producers located in New York. The handler already had several receiving stations in New York, and the license was denied on the grounds that the area was already being adequately served by local milk. In this case, the action of New York specifically discriminated against an out-of-state handler in favor of local handlers and producers, and was for no other purpose than to actually exclude the operations of said handler from the State of New York. The application of The Milk Prod-

ucts Sales Act of Mississippi is not discriminatory against the Appellant or any out-of-state handler and does not in any way exclude the out-of-state handlers from selling in Mississippi.

In the case of *Dean Milk Company* v. *City of Madison*, 340 U.S. 349, 71 S. Ct. 295, 95 L. Ed. 329 (1951), a handler located in Illinois was attempting to sell milk to stores located in the City of Madison, Wisconsin. The city adopted an ordinance prohibiting the sale of milk in the city unless it had been pasteurized and bottled at an approved plant located within five (5) miles of the center of the city. The United States Supreme Court struck down the ordinance and stated as follows:

> . . . We also assume since Congress has not spoken to the contrary, the subject matter of the ordinance lies within the sphere of state regulation even though interstate commerce may be affected. Milk Control Board v. Eisenberg Farm Products, 306 U.S. 346 (1939); see Baldwin v. Seelig, Inc., 294 U.S. 511, 524 (1935).
>
> But this regulation, like the provision invalidated in Baldwin v. Seelig, Inc., supra, in practical effect excludes from distribution in Madison wholesome milk produced and pasteurized in Illinois. "The importer . . . may keep his milk or drink it, but sell it he may not". Id., at 521. In thus erecting an economic barrier protecting a major local dairy against competition from without the State, Madison plainly discriminates against interstate commerce. This it cannot do, even in the exercise of its unquestioned power to protect the health and safety of its people, if reasonable nondiscriminatory alternatives, adequate to conserve legitimate local interests, are available. . . .

The above case is clearly distinguishable from the case at bar since the city ordinance clearly discriminated against

interstate commerce and was directed toward exclusion rather than equality of competition.

In the case of *Polar Ice Cream & Creamery Co.* v. *Andrews,* 375 U.S. 361, 84 S. Ct. 378, 11 L. Ed. 2d 389 (1964), the Florida Milk Commission adopted a regulatory scheme which required local handlers to accept out of state milk only if local producers were unable to fill the handlers' needs, which, again, was a case of obvious discrimination directed toward exclusion, entirely different from the case at bar.

Having now discussed the above cases, Appellee will refer to several of the U. S. Supreme Court's decisions announcing the law which does apply to the case at bar. In the case of *Milk Control Board* v. *Eisenberg Farm Products,* 306 U.S. 346, 59 S. Ct. 528, 83 L. Ed. 752 (1939), a handler with a receiving station in Pennsylvania was purchasing milk from producers located in Pennsylvania. The handler with a processing plant in New York would then sell milk to stores located in New York. This case questioned the authority of Pennsylvania to control the producer price, and in upholding the state's authority to do so, this Court stated:

> . . . But in matters requiring diversity of treatment according to the special requirements of local conditions, the states remain free to act within their respective jurisdictions until Congress sees fit to act in the exercise of its overriding authority. One of the commonest forms of state action is the exercise of the police power directed to the control of local conditions and exerted in the interest of the welfare of the state's citizens. Every state police statute necessarily will affect interstate commerce in some degree, but such a statute does not run counter to the grant of Congressional power merely because it incidentally or indirectly involves or burdens interstate commerce.

> The purpose of the statute under review obviously is to reach a domestic situation in the interest of the welfare of the producers and consumers of milk in Pennsylvania. Its provision with respect to license, bond, and regulation of prices to be paid to producers are appropriate means to the ends in view. The question is whether the prescription of prices to be paid producers in the effort to accomplish these ends constitutes a prohibited burden on interstate commerce, or an incidental burden which is permissible until superseded by Congressional enactment. That question can be answered only by weighing the nature of the respondent activities, and the propriety of local regulation of them, as disclosed by the record.
>
> These considerations we think justify the conclusion that the effect of the law on interstate commerce is incidental and not forbidden by the Constitution, in the absence of regulation by Congress. . . .

The case of *Highland Farms Dairy, Inc.*, v. *Agnew*, 300 U.S. 608, 57 S. Ct. 549, 81 L. Ed. 835 (1936), involved a handler located in Washington, D. C., who was selling packaged milk to stores located in Virginia, said stores in turn reselling the milk to consumers located in Virginia. The State of Virginia did not attempt to assert jurisdiction over the wholesale transactions between the Washington, D. C., handler and the stores in Virginia, but the jurisdiction of the Milk Commission in Virginia was questioned as to the establishment of minimum retail prices between the stores and consumers in Virginia, and the U. S. Supreme Court upheld the authority of the state and held that the state law did not place an undue burden on interstate commerce.

Neither the Eisenberg case nor the Highland Farms case is directly in point with the case at bar since neither case involved the sale of packaged milk by a handler in

one state to a store in another state. However, this occasion did arise later in the case of *State Milk Commission* v. *County Board of Arlington County,* 22 U.S. Law Week 3039 (1953), before the Supreme Court of Virginia, in which the Virginia Commission did assert jurisdiction to establish minimum wholesale prices on packaged milk between a Washington, D. C., handler and stores or consumers located in the State of Virginia. The decision or opinion of the Virginia Supreme Court is not contained in the official reports, but a synopsis of the decision is contained in 22 U.S. Law Week 3039, which reports said case as follows:

> Ruling below (Va. Sup. Ct. App., January 26, 1953): Virginia State Milk Commission has jurisdiction to fix minimum sale price of milk sold and delivered to consumers in adjacent Virginia County by District of Columbia distributors; Commission's order, increasing by one-half cent per quart retail price for such milk, does not burden interstate commerce.
>
> Contention: Commission's order violates Commerce Clause of Federal Constitution and is contrary to federal occupancy of field of Federal Marketing Agreement Act of 1937, as amended.
>
> Appeal filed June 16, 1953, by Malcolm D. Miller, Washington, D. C.
>
> No. 128, County Board of Arlington County, Virginia v. State Milk Commission.

The U. S. Supreme Court affirmed the decision of the Virginia Supreme Court by a per curiam decision in *County Board of Arlington County, Virginia* v. *State Milk Commission,* 346 U.S. 932, 74 S. Ct. 374, 98 L. Ed. 423 (1954). This decision is directly in point with the case at bar and involves the application of a state milk commission law,

which is more far-reaching than the state fair trade law involved in the case at bar.

A very recent decision of this Court was rendered in an appeal from the Supreme Judicial Court of Maine, being the case of *Maine Milk Commission* v. *Cumberland Farms Northern, Inc.*, 205 A.2d 146 (Me. 1964). In that case a handler located in New Hampshire was selling milk to stores located in Maine, the same situation as exists in the case at bar. Cumberland contended that the Maine Milk Commission law violated the interstate commerce clause of the United States Constitution, and the Supreme Judicial Court of Maine, after giving an analysis of the Baldwin, Hood, Dean and Polar cases, held as follows:

> In each of these cases, factors, not present in the instant case, were decisive in striking down the control legislation as unconstitutional.
>
> The legislation in the instant case was enacted for a legitimate purpose. The burden imposed on interstate commerce was incidental only. We hold that it was not violative of the commerce clause of the Federal Constitution.

The case was then appealed to this Court, wherein, on motion to dismiss, this Court did on April 26, 1965, grant the motion and dismissed the appeal for want of a substantial federal question. *Cumberland Farms Northern, Inc.* v. *Maine Milk Commission*, 85 S. Ct. 1333 (1965). The same identical issue is now presented in this case as was presented on motion to dismiss in the Cumberland case and this motion should be granted for the same reasons.

In applying the law set forth above with the facts in the case at bar, Appellee believes that the application of The Milk Products Sales Act would not constitute an undue burden on interstate commerce. By weighing the local impact with the national interest, this is a proper matter

for regulation by the State of Mississippi. The impact and economic consequences are localized and deal with a competitive situation existing in Mississippi and not Tennessee. Since the state law in this case does not discriminate against interstate commerce, the national interest in the free flow of commerce is not substantially affected by the application of the state law. Unless the Appellant is regulated under The Milk Products Sales Act, said law would be useless and totally ineffective, thereby bringing about injury to the welfare of the dairy industry in Mississippi, and would place the outside manufacturer at an economic advantage over the manufacturer in Mississippi. To compel Mississippi handlers to comply with the law while permitting the Appellant with whom they are competing to escape all state regulation would defeat rather than promote the legislative intent as stated in The Milk Products Sales Act.

The Milk Products Sales Act is not discriminatory on its face and imposes identically the same regulations on all who sell milk products in the State of Mississippi, whether they be located within or without the State of Mississippi, nor has the Act been administered in a discriminatory manner. In fact, from 40 to 50 per cent of the milk products sold in Mississippi are sold by manufacturers and distributors located outside of the State of Mississippi.

Any regulation will place some burden on commerce whenever delivery is an essential part of the sale being regulated, whether that commerce be interstate or intrastate. But the question is whether or not the regulation constitutes an "undue" burden on interstate commerce. In other words, does it place a burden on interstate commerce that it does not likewise place on intrastate commerce. The answer to this question should be in the negative and the enforcement of The Milk Products Sales Act in this case

does not constitute an undue burden on interstate commerce.

### 3. The Milk Products Sales Act of Mississippi Has Not Been Preempted by the Sherman Act, the Clayton Act, the Robinson-Patman Act, or Any Other Federal Legislation.

The second question presented by Appellee on this appeal contained on page 4 of the Jurisdictional Statement is apparently an attempt to assert the doctrine of preemption by virtue of the Sherman Act, the Clayton Act and the Robinson-Patman Act. First, Appellee states that this question cannot be now presented before this Court since the Appellant did not raise this issue in any of the proceedings in the Courts below, this being the first time that Appellant has ever raised this objection or claimed it as a defense. The objection not having been made in time, it should not be considered here. Appellee cannot believe that Appellant is seriously making this contention since the Jurisdictional Statement did not make any further mention of the doctrine of preemption, except to state it as an issue presented by this appeal, and Appellant gave no legal authorities whatsoever to support its position.

Nevertheless, this issue has been clearly put to rest by Congress in the adoption of the McGuire Act, 15 U.S.C.A. 45(a) (1-5), wherein Congress made specific recognition of the continued existence of state fair trade laws as to "any of the Antitrust Acts". In the case of *Hudson Distributors, Inc.* v. *The Upjohn Company*, 377 U.S. 386, 84 S. Ct. 1273, 12 L. Ed. 2d 394 (1964), this Court upheld the application of the Ohio Fair Trade Act to interstate transactions, a portion of this Court's opinion being as follows:

> The price fixing authorized by the Ohio Fair Trade Act and involving goods moving *in interstate commerce* would be, absent approval by Congress, clearly illegal under the Sherman Act, 26 Stat. 209, 15 U.S.C. § 1 et seq. Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U.S. 373, 31 S. Ct. 376, 55 L. Ed. 502. "Fixing minimum prices, like other types of price fixing, is illegal per se." Schwegmann Bros. v. Calvert Distillers Corp. supra, 341 U.S. at 386, 71 S. Ct. at 746. Congress, however, in the McGuire Act has approved state statutes sanctioning resale price maintenance schemes such as those involved here. Whether it is good policy to permit such laws is a matter for Congress to decide. Where the statutory language and the legislative history clearly indicate the purpose of Congress that purpose must be upheld. We therefore affirm the judgments of the Supreme Court of Ohio. (Emphasis added)

As further authority Appellant cites the cases of *Parker* v. *Brown*, 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1942); *Florida Avocado Growers* v. *Paul*, 373 U.S. 132, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963); and *Head* v. *Board of Examiners*, 374 U.S. 424, 83 S. Ct. 1759, 10 L. Ed. 2d 983 (1963).

## CONCLUSION

Therefore, the State of Mississippi contends that the only federal conditions placed upon state legislation are as follows:

(1) The state law cannot place an undue burden on interstate commerce.

(2) The state law cannot be in conflict with a federal law.

(3) The state law may be preempted by federal legislation containing the same subject matter.

Since none of the above conditions exist in the case at bar, Appellee respectfully submits that this motion to dismiss should be sustained and that the appeal should be dismissed for the want of a substantial federal question.

Respectfully submitted,

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END